IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2376 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHABEN MULCHAND BACHANI - Petitioner(s)
Versus
G.S.R.T.C. - Respondent(s)

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Appearance :
MR SV RAJU for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 06/09/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, petitioner, daughter of one Mulchand Bachani who was serving with Gujarat State Road Transport Corporation who

has expired in 1982, has prayed for an appropriate writ, direction or order directing the respondent to appoint her on compassionate ground on the death of said Mulchand Bachani.

2. It appears from the record that, father of the petitioner was serving with the State Transport Corporation and has expired on 25.8.1982. Son of the original-employee submitted an application for appointment on compassionate ground as per the policy of the Corporation; his case was considered; and he was offered the post of Helper in the year 1993 on attaining age of majority subject to fulfilling other conditions. However in the year 1993 he was declared unfit. Therefore, the petitioner submitted an application on 22nd February 1994 to appoint her on compassionate ground on death of the said Mulchand Bachani and the said application came to be rejected by communication dated 10th August 1994.

3. Shri Chetan Pandya, learned advocate appearing on behalf of the petitioner, has submitted that the action of the respondent in not appointing the petitioner on compassionate ground is contrary to their own policy, illegal, and arbitrary. It is submitted by him that, in fact her brother was already offered appointment on compassionate ground but he was declared unfit and therefore the petitioner being heir and daughter of the employee Mulchand Bachani she is entitled for appointment on compassionate ground. It is therefore requested to allow the present Special Civil Application.

4. Shri Munshaw, learned advocate appearing on behalf of the respondent, while opposing the present Special Civil Application, has submitted that the employee expired in the year 1982, whereas the application was submitted by the petitioner in the year 1994, and when the present Special Civil Application has come up for final

hearing in the year 2006, in the meantime the petitioner must have married; and when the family has survived for more than 24 years after the death of the employee if the petitioner is to be appointed on compassionate ground, the basic purpose of granting the appointment on compassionate ground will be frustrated. He has relied upon the recent decision of the Hon'ble Supreme Court in the case of ***State of J & K and Others Vs. Sajad Ahmedabad Mir, reported in [2006] 5 SCC 766.***

5. Heard the learned advocate appearing for the parties. It is not in dispute that the employee expired in the year 1982 and the petitioner submitted an application for appointment on compassionate ground in the year 1994. It is also not in dispute that the present application has come up for hearing in the year 2006. By this time, the petitioner must have married and therefore as on today she cannot be

said to be the dependent of the employee. Apart from that, when for 24 years the petitioner and/or her family members have survived, direction by this Court today, i.e., in 2006, on the respondent to appoint the petitioner on compassionate ground on death of her father who has expired in the year 1982, would frustrate the very purpose of appointment on compassionate ground. In the case before the Hon'ble Supreme Court, the Division Bench had directed the employer to make appointment on compassionate ground after a period of 12 years of death of the employee and the said order came to be set aside by the Hon'ble Supreme Court. Considering the judgment of the Hon'ble Supreme Court in the case of ***State of J & K and Others Vs. Sajad Ahmedabad Mir,****[supra]*, and considering the facts and circumstances, the petitioner is not entitled to any relief of appointment on compassionate ground after a period of 24 years of the death of the employee. Hence, the present Special Civil

Application requires to be dismissed. Accordingly, it is dismissed. Rule is discharged. There will be no order as to costs.

[M.R. Shah, J.]

rmr.